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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
ANDERSON, CATHARINE L	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/744,779	GILOH, TAMAR	
	Examiner	Art Unit	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-35,37-51,53-68,70* is/are rejected.

7)☒ Claim(s) *36,52 and 69* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-28, 30, 33, 35, 39-46, 48, 51, 55-63, 65, 68, and 70 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Igaue et al. (RE 35,687).

With respect to claims 23, 35, 41, 51, and 57-59, Igaue discloses a protective undergarment dressing 1, as shown in figure 1, comprising an integrally formed body 13b of an elastic liquid impermeable material, an absorptive device 14 associated with a first portion 8 of the body 13b, and a fibrous layer 12 affixed to the inner surface of the body 13b in a second portion 9, 10, as shown in figure 3. The undergarment dressing 1 is formed by associating the absorptive device 14 with the body 13b and affixing the fibers 12, as shown in figure 3.

The claimed phrase "wherein the panel comprises a compression molded material" is being treated as a product by process limitation; that is, that the fibers are affixed to the inner surface of the garment body as loose fibers. Affixing loose fibers to the inner surface of the garment body will result in a nonwoven layer attached to the inner surface of the garment body, since the process

described in the instant specification is essentially the process for forming an air-laid fabric on a surface. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113.

Igaue discloses the fibrous layer 12 comprises a nonwoven fabric, as described in column 2, lines 45-47. Thus, even though Igaue affixes the fibers into a nonwoven fabric prior to affixing them to the garment body, it appears that the product of Igaue would be the same or similar as that claimed, especially since the claimed product and the prior art product both have a final product of a garment body with a nonwoven fabric affixed to its inner surface.

With respect to claims 24, 39, 42, 55, and 60, the fibers 12 are affixed to the inner surface of the body 13b in all portions except the portion associated with the absorptive device 14, as shown in figure 4.

With respect to claims 25 and 43, the second portion 9, 10 is formed with multiple perforations 15, as shown in figure 3.

With respect to claims 26, 44, and 61, the first portion 8 is not perforated, as shown in figure 3.

With respect to claims 27, 40, 45, 56, and 62, the outer surface of the body 13b comprises fibers 13a affixed thereto, as disclosed in column 2, lines 50-51.

With respect to claims 28, 46, and 63, the liquid impermeable material is rubber, as disclosed in column 2, lines 48-49.

With respect to claims 30 and 48, the first portion 8 extends outward beyond the absorptive device 14, as shown in figure 3.

With respect to claims 33, 68, and 70, the undergarment is underpants, as shown in figure 1, which are fully capable of functioning as a dressing.

With respect to claim 65, the first portion may be defined to extend beyond the absorptive device.

Claims 23, 24, 28, 29, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke et al. (5,149,336).

With respect to claims 23 and 34, Clarke discloses an undergarment, a brassiere, as shown in figure 5. The garment comprises an integrally formed body 18 formed of a liquid impermeable material. An absorptive device 24 is associated with the inner surface of the body 18 in a first portion, and a fibrous layer 22 is affixed to the inner surface of the body 18 in a second portion, as shown in figure 5.

The claimed phrase "wherein the panel comprises a compression molded material" is being treated as a product by process limitation; that is, that the fibers are affixed to the inner surface of the garment body as loose fibers. Affixing loose fibers to the inner surface of the garment body will result in a nonwoven layer attached to the inner surface of the garment body, since the process described in the instant specification is essentially the process for forming an air-laid fabric on a surface. As set forth in MPEP 2113, product by process claims

are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113.

Clarke discloses the fibrous layer 24, as described in column 5, lines 61-64. Thus, even though Clarke affixes the fibers into a layer prior to affixing them to the garment body, it appears that the product of Clarke would be the same or similar as that claimed, especially since the claimed product and the prior art product both have the same final product.

With respect to claim 24, the fibers 22 are affixed to the inner surface of the body 18 in all portions except the portion associated with the absorptive device 24, as shown in figure 5.

With respect to claim 28, the liquid impermeable material is rubber, as disclosed in column 6, lines 60-62.

With respect to claim 29, the fibers are cotton, as disclosed in column 5, lines 43-45.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 29, 37, 47, 53, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al. (RE 35,687) as applied to claims 23, 35, 41, and 51 above, and further in view of Paul et al. (6,060,638).

Igaue discloses all aspects of the claimed invention but remains silent as to the type of fibers 12 used. It is common knowledge in the art to use cotton fibers to form the bodyside liner of an absorbent article, as disclosed by Paul in column 4, lines 12-27. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the fibers of Igaue cotton, since it was well-known in art to form a bodyside liner from cotton fibers.

Claims 31, 32, 49-50, and 66-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al. (RE 35,687).

Igaue discloses all aspects of the claimed invention with the exception of the undergarment dressing being seamless. It would have been an obvious matter of design choice to make the garment seamless, since the applicant has not disclosed that the lack of seams serves any particular purpose or solves any stated problem, and it appears the garment of Igaue would function equally well as the claimed invention.

Allowable Subject Matter

Claims 36 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to disclose a method of forming the claimed article comprising the

step of contacting the absorptive device with the liquid impermeable material before the liquid impermeable material is dry.

Claim 69 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to disclose a brassiere formed from a liquid impermeable material having multiple perforations with loose fibers affixed to the inner surface.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLA
cla
October 31, 2004

Larry I. Schwartz
Supervisory Patent Examiner
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